

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
GAINESVILLE DIVISION

2-11-08

IN RE:

FRANKLIN D. SPARKS, JR.,

Debtor.

CASE NO. G04-30380-REB

FRANKLIN D. SPARKS, JR.,

Plaintiff,

ADVERSARY PROCEEDING  
NO. 07-2049

v.

GEORGIA DEPARTMENT OF REVENUE,

Defendant.

CHAPTER 7

JUDGE BRIZENDINE

**ORDER**

Before the Court is the motion of Defendant Georgia Department of Revenue for summary judgment on the complaint of Plaintiff-Debtor Franklin D. Sparks, Jr. as filed herein.<sup>1</sup> Plaintiff commenced this adversary proceeding through the filing of a complaint on July 26, 2007 to determine dischargeability of a certain indebtedness under 11 U.S.C. § 523(a)(1) for unpaid taxes, interest, and penalties. In the motion, Defendant argues that Debtor's Georgia income tax liability for 1995, 1997, and 2001 is excepted from discharge herein. Based on the following reasons, the Court finds that Defendant's motion for summary judgment should be granted.<sup>2</sup>

<sup>1</sup> This case was reopened by Order entered on June 20, 2007.

<sup>2</sup> The Court conducted a status conference on November 29, 2007 after which the matter was set for trial. Subsequently, the Court granted Defendant's motion for continuance of trial, giving Defendant twenty days to supplement its motion for summary judgment. Defendant filed said supplement on January 18, 2008 to which Debtor has not responded. In its supplement,

The only remaining issue to be resolved by Defendant's motion is the dischargeability of Debtor's tax obligations for 1995, and with respect to same Debtor does not appear to dispute the following facts as set forth by Defendant in its motion. Subsequent to the filing of Debtor's 1995 return, the Internal Revenue Service revised Debtor's federal net income for that year. Defendant asserts, however, that Debtor failed to file amended Georgia income tax returns as required under O.C.G.A. § 48-7-82(e)(1), and that Defendant assessed additional state income taxes based on the upward federal revisions. The initial dispute concerned the legal effect of Debtor's alleged failure to file an amended return for purposes of 11 U.S.C. § 523(a)(1)(B)(i). Since the amended return arguably remained unfiled as of the petition date, Defendant maintains the state income tax liability established by the revision is excepted from discharge. In an amended response, Debtor counters that the filing of the original return for 1995, which occurred prior to the petition date, remains the controlling date. Therefore, any amended returns resulting from a subsequent upward revision to income would not alter the fact that the original returns were filed before the bankruptcy petition herein. As discussed below, the Court rejects this argument. In his response, Debtor also produced a copy of amended federal and state returns for 1995.

Summary judgment may be granted pursuant to Federal Rule of Civil Procedure 56, applicable herein by and through Federal Rule of Bankruptcy Procedure 7056, if "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In deciding a motion for summary judgment, the court "is not to weigh the evidence and determine the truth of the matter but to determine whether there is a

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Defendant further recites that at the status conference, Debtor indicated he does not dispute Defendant's claims with respect to his 1997 and 2001 state income tax liability and the non-dischargeability of same.

genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202, 212 (1986). Further, all reasonable doubts should be resolved in favor of the non-moving party, and “if reasonable minds could differ on any inferences arising from undisputed facts, summary judgment should be denied.” *Twiss v. Kury*, 25 F.3d 1551, 1555 (11<sup>th</sup> Cir. 1994), citing *Mercantile Bank & Trust Co. v. Fidelity & Deposit Co.*, 750 F.2d 838, 841 (11<sup>th</sup> Cir. 1985).

Upon review of this matter, the Court concludes that it presents no fact issue for resolution and may be disposed of on summary judgment on the basis of a disputed legal question. First, as cited in Defendant’s brief, in the case of *Jones v. Georgia Dep’t of Revenue (In re Jones)*, 158 B.R. 535 (Bankr. N.D.Ga. 1993), the court ruled that under Georgia state law a debtor must file an amended income tax return when the Internal Revenue Service modifies the amount of net income for income tax reporting purposes. Otherwise, the tax liability in question cannot be discharged. Based on a review of the reasoning in *Jones*, this Court agrees that under O.C.G.A. § 48-7-82(e)(1) Debtor herein was required to file an amended state income tax return consistent with the revision to income made by the I.R.S.

As mentioned above, Debtor has further claimed that he did in fact file such amended return, a copy of which is attached to his pleading and reflects a date of April 5, 2003, and leads to the second point to be addressed herein. In its supplement to its motion, Defendant contends that even if this tax return document is authentic, Debtor still does not prevail under 11 U.S.C. § 523(a)(1)(B). Based on the uncontested affidavit of Angela R. Knight, an employee of Defendant, following the revision of Debtor’s income amount by the I.R.S. on March 21, 2000 Debtor had 180 days under the above-cited Georgia statute to file his amended return. Thus, even if Debtor did file such a return, as evident from its face it was filed beyond this statutorily-mandated time period and

so it was late. Under Section 523(a)(1)(B), a late-filed return that is filed within two years before the filing of the bankruptcy petition is nondischargeable. Here, the return in question, allegedly filed on April 5, 2003, falls squarely within two years of the petition filing date of August 12, 2004.

Based upon a review of the record and applicable legal authority and argument, the Court concludes that Defendant's motion should be granted, and that it has established entitlement to relief with respect to its assertions regarding the exception of Debtor's 1995 state income tax liability from Debtor's discharge herein.

Accordingly, it is

**ORDERED** that the motion of Defendant Georgia Department of Revenue for summary judgment be, and hereby is, **granted**, and therefore Debtor's state income tax obligations for the year 1995 are **nondischargeable**, and, it is

**FURTHER ORDERED** that there being no dispute as to the dischargeability of Debtor's state income tax obligations for the years 1997 and 2001, said obligations are also **nondischargeable**, and it is

**FURTHER ORDERED** that judgment will be granted contemporaneously herewith in favor of said Defendant and against Plaintiff-Debtor on the complaint.

The Clerk is directed to serve a copy of this Order upon counsel for Plaintiff-Debtor, counsel for the Georgia Revenue Department, the Chapter 7 Trustee, and the U.S. Trustee.

**IT IS SO ORDERED.**

At Atlanta, Georgia this 8 day of February, 2008.

  
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ROBERT E. BRIZENDINE  
UNITED STATES BANKRUPTCY JUDGE